IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Kedar Das vs. Suresh Kumar

S.B. Civil Second Appeal No.232/94 against the judgment and decree dated 7.4.94 passed by the learned Addl. District Judge No.2, Jodhpur in Civil Appeal No.194/93.

Date of Judgment: January 05, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Ms. R.K.Thanvi, for the appellant.
Mr. Jitendra Chopra,for the respondent.

BY THE COURT:

This appeal is against the judgment and decree passed by the first appellate court dated 7.4.1994 by which the first appellate court allowed the appeal of the respondent-tenant and set aside the judgment and decree of the trial court dated 25.11.93 by which the trial court passed the decree of eviction against the respondent-defendant. The first appellate court held that the plaintiff failed to prove the relation of landlord and tenant between the plainfiff and defendant, therefore, the only question involved is whether there was relationship of landlord and tenant between the plaintiff and defendant.

Following substantial question of law was framed by this Court

while admitting the appeal on 27.11.1996:-

> "Whether Ex.1 and Ex.2 are conclusive proof about relationship of the landlord and tenant between the plaintiff-appellant and defendant-respondent, if so its effect?"

So far as above question is concerned, this Court has no hesitation in holding that Ex.1-sale deed and Ex.2-the notice given by the plaintiff are not conclusive proof about relationship of landlord and tenant between the plaintiff-appellant and defendant-respondent. Merely because of sale-deed, one cannot become landlord of a person who is in possession of the property otherwise than as tenant. Mere issuing of notice by one person claiming himself to be owner of the property or purchaser of the property from the alleged landlord, itself cannot be a conclusive proof of relationship of tenancy between plaintiff and defendant.

Apart from above, the facts of the case are that the plaintiff filed the suit for eviction alleging that the defendant is his tenant on the ground that defendant is in occupation as tenant on rent of Rs.7/- per month. The defendant paid rent to plaintiff's predecessor Ramanand Puri and that rent was paid upto the period 31.12.1980. The plaintiff purchased the suit property from Shri Ramanand Puri by registered sale-deed dated 4.4.1983. Admittedly, in the sale-deed dated 4.4.1983, there is mention that Ramanand Puri, the seller of the property handed

over rent deed and rent receipts obviously of the property in dispute and further obviously it must have been in relation to the alleged tenancy of defendant in the suit premises. The plaintiff though filed the suit in the year 1983, did not produce the rent deed and rent receipts initially and not only this but when the defendant specifically took a plea that the defendant was not tenant of even Ramanand Puri, the plaintiff's predecessor in title even then the plaintiff did not produce the rent deed and rent receipts which are mentioned in the sale-deed dated 4.4.1983, as handed over to the plaintiff. Even after the stand of the defendant in the written statement in the year 1986, that he is not tenant in the suit property, the plaintiff did not obtain the rent deed or rent receipts from the said seller if the statement of the plaintiff given in the trial court is correct that though there is mention of delivery of rent deed and rent receipts to plaintiff by the seller of the property but he did not in fact took rent receipts and rent deed from the seller.

In addition to above, it will be worthwhile to mention here that the trial court straight way reached to the conclusion that the defendant is tenant of the plaintiff and that conclusion has only foundation that the plaintiff proved his sale-deed and the defendant could not controvert the sale deed of the property obtained by the plaintiff from Ramanand Puri. The court proceeded on assumption that if a person is owner then all persons in occupation are necessarily only

tenant and there cannot be any possibility of other relationship or possibility of hostile title etc.

In fact in the suit itself there is no mention when the tenancy started, how it started, what were the documents evidencing the tenancy and the plaintiff thereafter did not produce any document to prove the tenancy. Apart from it, the plaintiff did not produce any oral evidence. The plaintiff only produced his own son as witness and there is no reason to believe that the plaintiff's son could have better knowledge than the plaintiff on the issue of relationship of landlord and tenant between the plaintiff's predecessor in title and the defendant.

The learned counsel for the appellant vehemently submitted that the defendant took absolutely false pleas. Firstly the defendant stated that he is not in possession of the property and his mother is in possession of the property and that too by virtue of agreement to sell in her favour executed by Ramanand Puri. But the defendant, in his statement, admitted that he is in possession of the property. He also did not produce the alleged agreement to sell alleged to have been executed in favour of his mother, nor the defendant produced his mother in the witness box. According to the learned counsel for the appellant, in view of the above, the trial court was fully justified in drawing adverse inference against the defendant.

The issued raised by the learned counsel for the appellant is

devoid of any force because of simple reason that even if adverse inference is required to be drawn against the defendant for non-production of agreement to sell in favour of his mother then that adverse inference can be to the effect only that there was no agreement to sell in favour of defendant's mother but this fact will not prove relationship of tenancy or relationship of landlord and tenant between Ramanand Puri and defendant. So far as non-production of defendant's own mother is concerned, for that adverse inference can be drawn to the effect that defendant's mother was never put into possession by Ramanand Puri under agreement to sell, but that fact also is of no help to the plaintiff because of the reason that even if it is proved that the defendant's mother was not in occupation in pursuance of any agreement to sell then it is also not necessarily the defendant is tenant. The defendant's admission that he is in possession of the property in dispute is not in contradiction to his own stand that his mother is in possession of the property because of the reason of their relationship of mother and son. In fact this is a case of no evidence so far as relationship of landlord and tenant is concerned.

Therefore, I do not find any force in this appeal and the same is hereby dismissed.

(PRAKASH TATIA),J.

mlt.